IN THE ESTATE OF HEE CHUN MENG

HIGH COURT MALAYA, JOHOR BAHRU
MAHADEV SHANKAR J
[PETITION FOR LETTERS OF ADMINISTRATION NO. 179/1985]
5 FEBRUARY 1988

SUCCESSION: *Estate claim for damages - Chose in action - Only asset of estate - Court may require administrative bond and sureties for letters of administration - Value of asset not ascertained - Minimum praecipe fee payable for extraction of letters of administration.*

The petitioner made an application for letters of administration of the estate of the deceased. The only asset of the estate was an estate claim for damages. The estate was not subject to estate duty. The Court registry informed the petitioner that an administration bond was required to be executed by two sureties and a fee of RM150 was paid to Court before the letters of administration could be extracted. It is against this imposition that the petition is now seeking relief.

Held:

[1] The civil claim by the estate under s. 8, Civil Law Act 1956, which was a chose in action was covered by s. 2 of the Probate and Administration Act 1959, which defined property as including a thing in action.

[2] The value of the civil claim could not be ascertained until the trial. The *praecipe* fee as stated in item 41 of Appendix B of the Rules of the High Court 1980 was calculated on the nett value of the estate as assessed by the Collector of Estate Duty. There was a lacuna under item 41 as it did not provide for assets of unknown value. Thus the minimum fee had to be paid for extracting letters of administration. The proper fee payable could be taken when the true value of the asset had been ascertained.

[3] The security and sureties to the administration bond could be required even where the only asset was a chose in action. However, it could be dispersed with in an appropriate case.

[Order accordingly.]

Cases referred to:

Datin Peggy Lilian Taylor v. Leong Yuet Yeng & Anor. [1985] CLJ (Rep) 449
Kwa Hock Kee & Anor. v. Kwa Kian Seng [1985] 2 MLJ 283

Legislation referred to:

Civil Law Act 1956, s. 8
Probate and Administration Act 1959, ss. 2, 35(1)(b), 39
Rules of the High Court 1980, O. 71 r. 34(3)(c)

For the petitioner - Ong Chee Yong; M/s. Lee & Cheah

JUDGMENT

Mahadev Shankar J:

The petitioners for letters of administration in this matter made an *ex parte* application for the determination of the following questions namely:

(i) Where a deceased left no personal effects and no immovable property at all of his own after his death and he left a cause of action in negligence against a third party for the benefit of his estate under s. 8 of the Civil Law Act 1956, whether in such a case, and in the present case,

(a) any security should be required under s. 35(1)(b) of the Probate and Administration Act 1959; and/or

(b) any surety to the administration bond is required under O. 71 r. 34(3)(c) of the Rules of the High Court 1980.

(ii) Whether, in such a case, as in the present case, any fee is payable for extracting the letters of administration whether under schedule B of the Rules of the High Court 1980, if applicable or otherwise.

On 7 April 1983 the deceased Hee Chun Meng was killed in a motor accident. The petitioner is the brother of the deceased. He applied to take out letters of administration to the estate of the deceased solely for the purpose of instituting the estate claim under s. 8 of the Civil Law Act 1956. The deceased left no tangible assets movable or immovable. Consequently a nil return was filed against the twenty-four items listed in the schedule to the standard form of the estate duty affidavit.

So the petitioner added an item to the estate duty affidavit stating that the sole asset left by the deceased was,

an estate claim relating to a traffic accident on 7 April 1983 at RM30 per day (i.e., RM780 per month based on 26 working days per month) for sixteen years multiplier i.e., RM780 x 12 x 16 and loss of expectation of life and funeral expenses and costs of letters of administration etc., estimated at RM149,760 subject to mitigation.

The estate duty office confirmed by a letter dated 15 January 1986 that the deceased's estate was free of duty.

But when the petitioner's solicitors sought to extract the grant of letters of administration to the deceased's estate they were informed by a member of the Court Registry that an administration bond was required to be executed by two sureties and a fee of RM150 had to be paid to the Court before the letters of administration could be extracted.

It is against this imposition that the petitioner is now seeking relief.

Although only a Chambering student Mr. Ong Chee Yong of Counsel for the petitioner has presented a most comprehensive submission to show why in such a case no administration bond or sureties are required. It is further contended that no fee should be payable to the Court for extracting the grant in such cases.

To his credit let me say that Mr. Ong Chee Yong has urged everything that could possibly be said for the petitioner.

It is a matter of regret therefore that I must find against him on his very first venture into the realms of advocacy.

The lynch-pin of Mr. Ong's submission turns upon the contention that the word "estate" in s. 35(1)(b) of the Probate and Administration Act 1959 (the Act) does not include choses in action. The submission is that a chose in action is a thing apart and does not constitute either movable or immovable property. Consequently it is argued that where the only asset is a chose in action the proper view is that the deceased has left no estate.

However s. 2 of the Act provides that, "estate" means all property which if a person died intestate would vest in the official administrator under s. 39. Section 2 also provides that "property" includes **a thing in action** and any interest in movable or immovable property. In other words under the law it is obvious that a thing in action is property. Even though it is intangible it is a right which could move from one person to another depending upon capacity to sue and in that sense a thing in action could be said to be movable property.

The trouble with cases such as the present is that the real value of the chose in action cannot be determined until the claim has been finally resolved by agreement or litigation. Consequently if s. 35 of the Act is applied in the ordinary way, security has to be given, and it would ordinarily be by bond in the prescribed form by the grantee and two sureties in the amount at which the estate is sworn.

But s. 35 is not inflexible. The Court can give relief in an appropriate case by increasing or decreasing the number of sureties or dispensing with them altogether. Where the only asset is a chose in action and the administrators would in fact be saddled with a liability in starting litigation there seems to be every reason why the bond should be dispensed or alternatively the petitioner be allowed to extract the grant purely on his own recognizance without any added security or sureties.

Each case must of course be decided on its own facts. In the majority of such cases where the next of kin would include persons under disability Court approval would in any event be required for any settlement and directions are normally given as to the distributive shares of the individual persons for whose benefit the action has been brought.

Another point which arises out of Counsel's submission is the contention that no fee should be payable under item 41 of Appendix B to the Rules of the High Court because the deceased left no estate.

Again with respect I cannot agree with this submission. In the present case the petitioner took it upon himself to value the chose in action and this resulted in a fee of RM150 being quoted by the Registry as the price payable for the *praecipe* preliminary to extraction.

However closer perusal of item 41 of Appendix B shows that the *praecipe* fee is calculated on the nett value of the estate as assessed by the Collector of Estate Duty.

It is very nearly impossible to calculate what a chose in action is really worth, until the claim has been settled or adjudicated. Consequently if a petitioner merely lists the asset in question as being a chose in action without giving it any notional value it should still be possible to extract the grant upon payment of a fee of RM10. Clearly there is a lacuna under item 41 since it does not provide for assets of unknown value. Until the rules are amended O. 91 r. 2 of the Rules of the High Court does provide a way out. The fees and percentages by this rule are to be collected in such manner as the Chief Justice may from time to time direct. Just as it is usual for the payment of the estate duty to be postponed where the value of the assets have to be ascertained so also it seems to me that there is nothing to preclude a petitioner in a proper case from applying for the *praecipe* fee to be postponed until the value of the chose in action has been ascertained.

Mr. Ong has drawn my attention to *Datin Peggy Lilian Taylor v. Leong Yuet Yeng & Anor.* [1985] CLJ (Rep) 449 and *Kwa Hock Kee & Anor. v. Kwa Kian Seng* [1985] 2 MLJ 283. These cases decided that an estate claim can be instituted on the strength of the grant of the letters of administration itself even if the schedule to the estate duty affidavit does not identify the chose in action as an item of asset since it is merely evidence as to whether estate duty is payable.

The Court was there concerned with the capacity to sue. That capacity arises as soon as the grant is extracted. But what the case does show also, is that it is not necessary for the petitioner to saddle himself with a calculation of what the chose in action is worth at the time of the affirming of the estate duty affidavit.

Consequently I would answer the questions of law posed by the petitioner as follows. Whilst security and sureties to the administration bond can legally be required in all cases where the only asset of a deceased's estate is a chose in action, the actual requirement of such security or surety can be decided only upon the facts of each particular case. I further would state that the minimum fee has to be paid for extracting letters of administration in all such cases. It stands to reason that the petitioner would not go to the trouble of taking out letters if the chose in action did not have some value. The proper fee payable can be taken when the true value of the asset has been ascertained.

This application was brought for the benefit of the estate. Accordingly I order that the costs of and incidental to the application be paid out of the estate.

I would put on record the debt of this Court to Mr. Ong Chee Yong for the obvious trouble he has taken in this matter.

Also found at [1989] 1 CLJ 942